



<b>Developer Agreement</b> Construction by State At Developer Expense			Organization and Address
Agreement Number			Section / Location
State Route No.	Control Section No.	Region	Description of Work
Advance Payment Amount		Surety Bond	

This AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, between the STATE OF WASHINGTON, Department of Transportation, acting by and through the Secretary of Transportation, hereinafter called the "STATE", and the above named organization, hereinafter called the "DEVELOPER".

WHEREAS, the DEVELOPER wishes to construct an intersection and/or improvements within the STATE's right-of-way, and

WHEREAS, the STATE is planning the construction or improvement of a section of state route as shown above, and in connection therewith, the DEVELOPER has requested that the STATE perform certain work as herein described, and

WHEREAS, it is deemed to be in the best interest for the STATE to include the necessary items of work, as requested by the DEVELOPER, in the STATE's construction contract proposed for the improvement of this section of State Highway, and

WHEREAS, the STATE and the DEVELOPER now wish to define responsibility for construction and maintenance of the proposed improvements.

NOW THEREFORE, by virtue of Title 47.50 RCW, it is mutually agreed between the parties hereto as follows:

1. The STATE, as agent acting for and on behalf of the DEVELOPER, agrees to perform the above "Description of Work".

Plans, specifications and cost estimates shall be prepared by the STATE in accordance with the current State of Washington Standard Specifications for Road, Bridge, and Municipal Construction, and adopted design standards, unless otherwise noted. The STATE will incorporate the plans and specifications into the STATE's project and thereafter advertise the resulting project for bid and, assuming bids are received and a contract is awarded, administer the contract.

The DEVELOPER hereby approves the plans and specifications for the described work as shown on Exhibit "B", attached hereto and by this reference made a part of this AGREEMENT.

2. The DEVELOPER may, if it desires, furnish an inspector on the project. Any costs for such inspection will be borne solely by the DEVELOPER. All contact between said inspector and the STATE's contractor shall be through the STATE's representative.
3. The DEVELOPER agrees, upon satisfactory completion of the work involved, to deliver a letter of acceptance which shall include a release and waiver of all future claims or demands of any nature resulting from the performance of the work under this AGREEMENT.

If a letter of acceptance is not received by the STATE within 90 days following completion of the work, the work will be considered accepted by the DEVELOPER and shall release the STATE from all future claims and demands of any nature resulting from the performance of the work under this AGREEMENT.

The DEVELOPER may withhold this acceptance of work by submitting written notification to the STATE within the 90 day period. This notification shall include the reasons for withholding the acceptance.

4. The DEVELOPER, in consideration of the faithful performance of the work to be done by the STATE, agrees to reimburse the STATE for the actual direct and related indirect cost of the work.

An itemized estimate of cost for work to be performed by the STATE at the DEVELOPER's expense is marked Exhibit "A", and is attached hereto and by this reference made a part of this agreement.

Partial payments shall be made by the DEVELOPER, upon request of the STATE, to cover costs incurred. These payments are not to be more frequent than one (1) per month. It is agreed that any such partial payment will not constitute agreement as to the appropriateness of any item and that, at the time of the final audit, all required adjustments will be made and reflected in a final payment.

5. A surety bond in the amount shown above written by a surety company authorized to do business in the state of Washington shall be furnished to the STATE prior to execution by the STATE of this agreement. The bond shall remain in force until written release by the STATE.

The DEVELOPER agrees to make payment for the work to be done by the STATE within thirty (30) days from receipt of billing from the STATE.

Payment not made within thirty (30) days after receipt of billings shall bear interest at the rate of one percent per month or fraction thereof until paid pursuant to RCW 43.17.240.

6. The DEVELOPER agrees to pay the STATE the "Advance Payment Amount" stated above within 20 days after final execution of this AGREEMENT. The advance payment represents approximately fifteen (15) percent of the estimate of cost and covers costs incurred by the STATE in the initial stages of the project. The advance payment will be carried throughout the life of the project with final adjustment made in the final payment.

7. In the event unforeseen conditions require an increase in the cost of 25 percent or more from that agreed to on Exhibit "A", this AGREEMENT will be modified by supplement AGREEMENT covering said increase.

In the event it is determined that any change from the description of work contained in this AGREEMENT is required, approval must be secured from the DEVELOPER prior to the beginning of such work. Where the change is substantial, written approval must be secured.

Reimbursement for increased work and/or a substantial change in the description of work shall be limited to costs covered by a written modification, change order or extra work order approved by the DEVELOPER.

8. The DEVELOPER hereby grants and conveys to the STATE the right of entry upon all land which the DEVELOPER has interest, within or adjacent to the right-of-way of the highway, for the purpose of constructing said improvements.

9. The STATE shall have ownership and control of the completed facility within the STATE right-of-way, and related traffic signal induction loops outside the STATE's right-of-way with the exception that the DEVELOPER, his assigns and successors, shall be responsible for the

construction, reconstruction, and maintenance of the connection and appurtenances between the shoulder line of the highway and the right-of-way line inclusive of surfacing and drainage when applicable. Future construction or maintenance within the areas responsible by the DEVELOPER, his assigns, and successors which will affect the traffic signal induction loops shall require STATE review and approval.

10. Any breach of the terms and conditions of this AGREEMENT, or failure on the part of the DEVELOPER to proceed with due diligence and in good faith in the construction and/or maintenance work provided for herein, shall subject this AGREEMENT to be canceled and, at the option of the STATE, may require the DEVELOPER to remove all or part of the facilities constructed hereunder at the DEVELOPER's sole expense.

11. The DEVELOPER shall indemnify and hold the STATE and its agents, employees and/or officers harmless from and shall process and defend at its own expense any and all claims, demands, suits at law or equity, actions, penalties, losses, damages, or costs, of whatsoever kind or nature, brought against the STATE, its agents, employees and officers arising out of, in connection with, or incident to the execution of this AGREEMENT and/or the DEVELOPER's performance or failure to perform any aspect of this AGREEMENT. Provided, however, that if such claims are caused by or result from the concurrent negligence of (a) the DEVELOPER and (b) the STATE, its agents, employees, and/or officers, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the DEVELOPER, and provided further, that nothing herein shall require the DEVELOPER to hold harmless or defend the STATE, its agents, employees and/or officers from any claims arising from the sole negligence of the STATE, its agents, employees, and/or officers.

12. In the event that any party deems it necessary to institute legal action or proceedings to enforce any right or obligation under this AGREEMENT, the parties hereto agree that any such action or proceeding shall be brought in a court of competent jurisdiction situated in Thurston County, Washington.

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT as of the day and year first above written.

## DEVELOPER

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## STATE OF WASHINGTON DEPARTMENT OF TRANSPORTATION

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_